IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 259 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS

==========

1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

SAMIM @SALIM ABDUL SATAR SHAIKH

Appearance:
MR HH PATEL, ld.ADDL.PUBLIC PROSECUTOR for appellant
MR EE SAIYED for Respondents

CORAM : MR.JUSTICE KSHITIJ R.VYAS

Date of decision: 21/01/2002

ORAL JUDGEMENT

All the three respondents accused were tried for the offence punishable under Section 307 read with Section 34 of the Indian Penal Code for causing injuries with razor and sword to the complainant Shaikh Munaf Shaikh Mosin, by the learned Addl.Sessions Judge, Surat in Sessions Case No.53 of 1989. The learned Addl.Sessions Judge, at the end of the trial, by his

judgment and order dated 3.12.1991 convicted all the accused to suffer rigorous imprisonment for six months and a fine of Rs.250/- in default, to undergo simple imprisonment for seven days.

2. The State of Gujarat has filed this appeal for enhancement of the sentence.

3. As per the FIR filed in the instant case, the complainant is having a Larry at the four roads of Bapunagar area of the city of Surat where he is selling tea. The complainant had married to one Nazmabibi 14 years prior to the date of incident. Out of the said wedlock, the complainant has became father of six children. It is the case of the complainant that 15 days prior to the complaint, one Aminabibi @ Munni, sister of accused no.1 was staying with him as his kept. That on 29.4.1987, Aminabibi had gone with four persons and had illicit intercourse with them. When the complainant came to know about the same, he advised Aminabibi to behave properly and not to repeat the said act. In fact the complainant left her on the next day. It appears that the said lady filed a complaint against him before the Rander Police Station. On 10.5.1987, the complainant was arrested and on the next day, i.e. on 11.5.1987, he was released on bail. At 9.00 p.m. on the same day, all the accused went to the tea Larry of the complainant. The accused no.1 asked the complainant as to whether he was ready to marry his sister Munni or not. The complainant replied that if she is prepared to give up the illegal activities, he is prepared to marry her. However, the said answer did not satisfy the accused. The accused no.1 caused injuries with razor on the left cheek and on the left portion of the neck, while the accused no.2 caused injuries with sword on the elbow of the left hand and the accused no.3 also caused injury with razor on the left side of the left eye and also on the upper portion of the lips of the complainant. The complainant ran to save his life towards the huts of Nehrunagar area, the accused followed him and again caused injuries on the right side portion of the chest, right portion of the shoulder and on the head. The complainant thereafter fell down on the ground and all the accused fled. On the basis of the complaint Exh.21 filed before the Rander Police Station, the police started usual investigation in the matter. The complainant was sent to the Civil Hospital, Surat. The complainant was admitted in the hospital as an indoor patient. All the accused were thereafter arrested and they were tried for the offences for which they were charged. The accused denied the charge and claimed to be tried. Their defence was of

total denial. At the end of the trial, as stated earlier, the learned Judge found the involvement of the accused in commission of the crime. He, therefore, convicted all the accused for the offences under Section 307 read with Section 34 of the Indian Penal Code. He, however, imposed a sentence of only six months' rigorous imprisonment. This inadequacy of sentence is under challenge in the present appeal.

4. Mr.H.H.Patel, ld.APP after inviting my attention to the evidence on record and the reasoning of the learned Judge, submitted that the sentence of six months imposed by the learned Judge is disproportionate to the serious offence committed by the accused. Mr.Patel submitted that in fact, the learned Judge has not given any reason for taking too lenient view in the matter as far as the sentence is concerned.

Mr.E.E.Saiyed, learned Counsel appearing for the respondents submitted that in view of the evidence of injured complainant and other eye witnesses, it would be impossible for him for acquittal of the accused. He, however, submitted that the learned trial Judge used his discretion in favour of the accused by passing a sentence of six months' rigorous imprisonment. It would be too much for this Court after a lapse of 10 years to enhance the sentence when the accused have already undergone the sentence imposed upon them and rather settled in life.

5. The complainant Shaikh Munaf Shaikh Mosin, PW3-Exh.20 is the injured witness in the instant case. In his evidence, he has corroborated the complaint. He has clearly stated regarding the involvement of all the accused as well as about the injuries caused by them with the respective weapons. Dr.Dilip Chokshi, PW11-Exh.37, Medical Officer of Civil Hospital, Surat in his evidence has also supported the complainant. Dr.Chokshi has stated that the complainant was admitted as an indoor patient in the hospital. On examining him, he has found more than one injuries of incised wound on the left hand side of neck and on the cheek and also on the right side portion of the chest. The blood was oozing out from the wounds. According to the Doctor, these injuries are possible with the muddamal razor as well as sword. In his cross examination, the Doctor has stated that it is not possible for him to say as to which injury is possible with razor or sword. Except the said question, no other question is put to the Doctor. Thus, the evidence of Dr.Chokshi totally corroborates the say of the complainant. There is no reason to doubt the evidence of the injured complainant. The complainant is

also supported by other eye witnesses who are examined by the prosecution.

6. The wife of the complainant Nazmabibi, PW1-Exh.16 has stated in her evidence that on getting the information regarding the assault by the accused on her husband, she had reached the spot where she found the accused inflicting blows on her husband with weapons. Zakir Husein, PW2-Exh.17 has also proved the quarrel between the accused and the complainant. The other two eye witnesses, namely, Shaikh Nur Amir, PW4-Exh.22 and Fakir Mohamad, PW5-Exh.23, and Mithun @ Mohamadpasu, PW7-Exh.29 are also the eye witnesses. On reading their evidence, it is clear that it fully supports the say of the complainant regarding the involvement of the accused. Since the trial Judge has accepted the oral testimony of all the eye witnesses and the complainant and the learned Counsel for the respondents, and has practically conceded the fact of involvement of the accused in the case, it is not necessary for me to discuss the evidence of the prosecution witnesses in detail. Suffice it to say that I am in total agreement with the reasoning and the ultimate conclusion reached by the learned trial Judge, namely, that the prosecution has proved the involvement of the accused in commission of the offence. I accordingly convict all the accused under Section 307 read with Section 34 of the Indian Penal Code.

7. The only question to be decided in this appeal is about the adequacy of the sentence. In view of the fact that the complainant sustained about five injuries on vital parts of the body with deadly weapons like razor and sword used by the accused, it is clear that the accused have committed a serious offence and therefore, they do not deserve any leniency. No special reasons have been given in the instant case for taking a lenient view against the accused for awarding imprisonment of six months only which is totally disproportionate considering the seriousness of the offence. The complainant was admitted in the Civil Hospital, Surat where he remained as an indoor patient, however, he left the hospital for getting better treatment. True, the complainant has not produced anything on record regarding the treatment he has taken from any other hospital. Merely because no further details are produced on record regarding the treatment, one cannot come to the conclusion that the complainant had not taken any further treatment. On the other hand, one should bear in mind the fact that the incident had taken place 14 years back i.e. in the year 1987. The accused were convicted four years thereafter, i.e. in the year 1991. The accused have already

undergone the sentence imposed upon them. Therefore, by this time, they must have also settled in life. Thus, after the lapse of so many years, it would not be proper to send them to jail to undergo a longer period of sentence. Considering the above, the following order is passed:

This appeal for enhancement of sentence preferred by the State is allowed. All the respondents accused are convicted for the offence punishable under Section 307 read with Section 34 of the Indian Penal Code. They are therefore, sentenced to suffer Rigorous Imprisonment for one year and to pay a fine of Rs.250/- (Rupees two hundred and fifty only) each, in default to undergo Simple Imprisonment for further seven days. All the accused shall be entitled to set off of the period of imprisonment already undergone by them. All the accused individually shall also pay compensation of Rs.3,000/(Rupees Three thousand only) to the complainant Shaikh Munaf Shaikh Mosin, residing at Subhasnagar, Behind Shital Talkies, Surat, within four weeks from today. It is made clear that if the accused deposits the amount of compensation before the trial Court within four weeks from today, in that event, the accused shall not undergo the enhanced sentence imposed today and in that event, the period of imprisonment already undergone shall suffice the sentence. On the amount of compensation being deposited, the learned trial Judge shall pay the same to the original complainant after proper verification. The appeal is accordingly allowed.

(Kshitij R. Vyas, J.)

Sreeram.